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Tax Exempt and Government Entities


403(b) Program



The 403(b) Landscape Post December 31, 2008




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Where Are The Regulations?

- 403(b) regulations became effective 1/1/09
- EO Controlled Groups – 1.414(c)(5) became effective 1/1/09
- But wait.....




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The Written Plan Requirement


- Originally to be in place by 1/1/09 – no remedial amendment period for 403(b)
- As of 1/1/09, no pre-approved or determination letter program exists
- Not everyone was ready, so.....

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Notice 2009-3 Issued 12/11/08


- Transition relief from the written plan requirement during the 2009 calendar year
- Not a mere free “push back” of the date plan is required by, since.....

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Relief is Based on Plan Sponsor's Actions!


- Written plan must be adopted on or before 12/31/09. It must intend to satisfy 403(b), including the regulations
- During 2009, plan must operate in accordance with a reasonable interpretation of 403(b) and the regulations
- On or before 12/31/09, best efforts must be made to retroactively correct operational failures during 2009 to conform with the written plan

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What are “Best Efforts” for 2009 Corrections?


- EPCRS – Rev Proc. 2008-50 - Section 6 - general principals
 - Main theme = restoration of benefits

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2009 Compliance


- No written plan form failure defects in 2009 - includes
 - Absence of written plan or
 - Amendment of existing plan to comply with final regulations
- 2009 Focus – operational failures
- Notice’s transition relief applies only to 2009 calendar year

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Notice 2009-3 Sees the Future

- Pre-approved prototype program
 - draft revenue procedure
 - draft sample plan language
 - request for comments
- Next – a determination letter program, and.....

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Notice 2009-3 Sees the Future

- Program intensive retroactive remedial amendments for plans after 2009
- 403(b) EPCRS modifications



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And, Meanwhile...

- Examinations continue
 - Universal availability is still main issue
- Concerns continue:
 - Plan termination not always simple
 - Confusion about 3121(w) churches vs. 414(e) religious organizations
- 2009-3 not an aggressive “free for all”

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CAUTION

- Notice 2009-3 is not a free pass
- Use 2009 constructively and timely

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The Written Plan –
Essential Elements

- Eligibility (non-discrimination rules)
- Benefits
- Dollar limitations
- Available investments
- Time and form of distributions

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The Written Plan –
Optional Elements

- Loans
- Hardship distributions
- Auto enrollment
- Roth's

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The Written Plan –
Optional Elements

- Elective deferral catch-ups
 - 15 year plus service
 - Age 50 or older
- In-service contract exchanges
- Transfers
- Termination
- 5-year provision

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403(b) Failures and their Effect

- Not operating in accordance with plan terms
 - Affects all contracts (aggregation rule) of employee(s) for whom failure occurred
- Nondiscrimination failures – elective and non-elective
 - Non-elective failures not applicable to governments
 - Plan-wide affect

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403(b) Failures and their Effect

- Ineligible employer
 - Plan-wide affect
- Improper written plan or no written at all
 - Plan-wide affect (not in 2009)

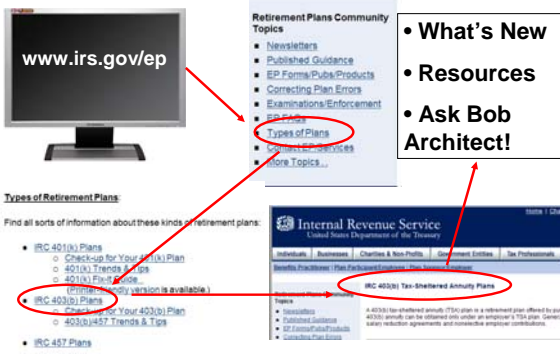
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The screenshot shows the IRS website with several red circles and arrows highlighting key areas: 'Types of Plans' in the left sidebar, 'What's New' and 'Resources' in the main content area, and 'Ask Bob Architect!' in a callout box. A red arrow points from the 'www.irs.gov/ep' URL to the website image.

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How Can I Find Out More?




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Thank you!

Questions?



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